

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

_____)	
In the Matter of:)	
)	
Dantess, Inc.)	
t/a Pearl)	
Holder of a Retailer's License)	Case No. 60853-06/03S
Class "CR" at premises)	Order No. 2006-142
901 9 th Street, N.W.)	
Washington, D.C.)	
)	
Respondent)	
_____)	

BEFORE:

Charles A. Burger, Chairperson
Vera M. Abbott, Member¹
Audrey E. Thompson, Member¹
Judy A. Moy, Member
Peter B. Feather, Member
Albert G. Lauber, Member¹
Eartha Isaac, Member

ALSO PRESENT: Stephen J. O'Brien, Esquire, on behalf of the Respondent

Michael Stern, Esquire, Senior Assistant Attorney General, Tasha Hardy,
Esquire, Assistant Attorney General, on behalf of the District of Columbia

Fred P. Moosally, III, Esquire, General Counsel
Alcoholic Beverage Regulation Administration

Tiwana Z. Clarke, Esquire, Assistant Attorney General
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

On May 26, 2006, the Alcoholic Beverage Control Board ("Board"), pursuant to D.C. Official Code § 25-826(a) (2001), ordered the suspension of the Class "CR" Retailer's License held by Dantess, Inc., t/a Pearl ("Respondent"). The suspension was based upon several investigations

¹ ABC Board members Vera M. Abbott, Audrey E. Thompson and Albert G. Lauber did not participate in all of the proceedings. As a result, Mrs. Abbott, Ms. Thompson and Mr. Lauber did not vote on this matter.

conducted by Alcoholic Beverage Regulation Administration (“ABRA”) Investigators Richard Coward, Donnell S. Butler and Juliana N. Tengen² as the result of eight (8) PD-251 incident reports received from the First District of the Metropolitan Police Department (“MPD”) pursuant to D.C. Official Code § 25-804(b) (2001). The grounds for the suspension were set forth in the Notice of Summary Suspension, dated May 26, 2006, which was served on the Respondent.

On Friday, May 26, 2006, the Respondent requested a summary suspension hearing pursuant to D.C. Official Code § 25-826(c) (2001). The Board held summary suspension hearings on May 31, 2006 and June 7, 2006. At the conclusion of the June 7, 2006 proceeding, the Board issued from the bench, on the record and through a formal articulation of the decision and vote, its 6-0 decision to keep the suspension of the Respondent’s license in place. Additionally, the Board scheduled a show cause hearing for July 19, 2006, pursuant to D.C. Official Code § 25-447(c) (2001) and Title 23 of the District of Columbia Municipal Regulations (“23 DCMR”) § 1604 (2004), to revoke the Respondent’s license based upon the evidence presented at the summary suspension hearings. The case came before the Board for a show cause proceeding on July 19, 2006. The Board held the show cause hearing to revoke the Respondent’s license based upon the charge and specifications set forth in the June 19, 2006 Notice to Show Cause, as described below. At the conclusion of the July 19, 2006 show cause hearing, the Board took its decision in this matter under advisement.

The Board considered in making its decision the evidence addressed at the hearings, the testimony of the witnesses, the arguments of counsel, the exhibits admitted in the hearings, and the documents comprising the Board’s official file in making the following:

FINDINGS OF FACT

1. The establishment is principally and jointly owned by Tesfaye Seyoum and Daniel Z. Davis. (See ABRA Licensing File No. 60853; Tr. 5/31/06 at 5-6; Tr. 6/7/06 at 60, 94, 122.) The establishment holds a Class “CR” Retailer’s License and is located at 901 9th Street, N.W. (See ABRA Licensing File No. 60853; Tr. 5/31/06 at 13.)
2. The Board held summary suspension hearings on May 31, 2006 and June 7, 2006. (See Summary Suspension File No. 60853-06/03S.) On June 7, 2006, the Board issued from the bench, on the record and through a formal articulation of the decision and vote, its 6-0 decision to keep the suspension of the Respondent’s license in place and schedule a show cause hearing, pursuant to D.C. Official Code § 25-447(c) (2001) and 23 DCMR § 1604 (2004), to revoke the Respondent’s license based upon the evidence presented at the summary suspension hearings. (See Summary Suspension File No. 60853-06/03S.) The case came before the Board for a show cause hearing on July 19, 2006. (See Show Cause File No. 60853-06/017C.) As a preliminary matter during the July 19, 2006 hearing, the Board took judicial notice of the testimony and evidence presented by the parties at the May 31, 2006 and June 7, 2006 summary suspension hearings. (Tr. 7/19/06 at 4.)

² Juliana N. Tengen is no longer employed at ABRA.

3. The Notice to Show Cause, dated June 19, 2006, charges the Respondent with allowing the licensed establishment to be used for an unlawful or disorderly purpose, for which the Board may take action pursuant to D.C. Official Code § 25-823(2) (2001), and contains as part of Charge I, Specifications A through J. (See Show Cause File No. 60853-06/017C.)³
4. The Respondent's Class "CR" Retailer's License has been suspended since May 26, 2006, when the Board, pursuant to D.C. Official Code § 25-826(a) (2001), issued the Notice of Summary Suspension to the Respondent, based upon several investigations conducted by ABRA Investigators Richard Coward, Donnell S. Butler, and Juliana N. Tengen as the result of eight (8) PD-251 incident reports received from MPD's First District pursuant to D.C. Official Code § 25-804(b) (2001). (See Summary Suspension File No. 60853-06/03S.)
5. With regard to the incident on Monday, January 16, 2006 (Specification A), ABRA Investigator Juliana Tengen indicated that the incident involved a "bouncer" of the establishment allegedly pouring ice and liquid onto a female patron. (See Government's Exhibit No. 1; Tr. 5/31/06 at 28-29.) Investigator Tengen was unable to interview the female complainant about the incident. Instead, Investigator Tengen interviewed the MPD officer who interviewed both the complainant and the "bouncer". (See Government's Exhibit No. 1; Tr. 5/31/06 at 29.) The MPD officer informed Investigator Tengen that the "bouncer" denied tossing ice and liquid onto the complainant. (See Government's Exhibit No. 1; Tr. 5/31/06 at 29-30.) Investigator Tengen discussed the incident with the establishment's ABC manager, Michael Walker, who stated that he had no knowledge of the incident and recommended that Investigator Tengen speak with another manager of the establishment Monica Jacquet. (See Government's Exhibit No. 1; Tr. 5/31/06 at 16-17.) Investigator Tengen spoke with Ms. Jacquet on one occasion and Ms. Jacquet told Investigator Tengen she would call her once she had a chance to review the establishment's incident log; however, Ms. Jacquet never called her back. (See Government's Exhibit No. 1; Tr. 5/31/06 at 16-17, 30-31.)
6. With regard to the incident on Sunday, January 22, 2006 (Specification B), Investigator Tengen interviewed the complainant Jessica Brown. (See Government's Exhibit No. 2; Tr. 5/31/06 at 19, 31-32.) Investigator Tengen learned that while Ms. Brown was inside of the establishment a male individual began flirting with her and that she did not complain to the establishment's security because she did not want to "make a scene." (See Government's Exhibit No. 2; Tr. 5/31/06 at 19, 31-32.) Ms. Brown informed Investigator Tengen that after leaving the establishment, the same male individual followed her as she walked to her car, which was parked one block away from the establishment on H Street, N.W., and assaulted her. (Tr. 5/31/06 at 19, 21, 33-37.) The patron was later arrested by MPD. (See Government's Exhibit No. 2; Tr. 5/31/06 at 19.) Investigator Tengen interviewed Mr. Walker regarding the incident and was told that the establishment was not aware of the incident until the patron was arrested. (See Government's Exhibit No. 2; Tr. 5/31/06 at 20.) Mr. Walker informed Investigator Tengen that the establishment's security plan is used during the daily operations and that patrons are assisted to their cars or into a cab when leaving the establishment. (See Government's Exhibit

³ The Board notes that Specification D of Charge I on the June 19, 2006 Notice to Show Cause incorrectly cites the date of the incident as February 4, 2006. The correct date of the incident, as cited in the corresponding ABRA investigative report, case #7319, is February 5, 2006. (See Show Cause File No. 60853-06/017C; See Government's Exhibit No. 4.)

No. 2; Tr. 5/31/06 at 20.) Investigator Tengen noted that Ms. Brown was not assisted to her car before being assaulted. (Tr. 5/31/06 at 21.)

7. With regard to the incident on Sunday, January 29, 2006 (Specification C), Investigator Tengen interviewed the complainant who was celebrating his birthday at the establishment that evening. (See Government's Exhibit No. 3; Tr. 5/31/06 at 22.) The complainant told Investigator Tengen that while talking with a friend, their conversation was interrupted by a male individual who subsequently threw alcohol in the complainant's face. (See Government's Exhibit No. 3; Tr. 5/31/06 at 23.) The complainant told Investigator Tengen that as he was wiping off his face, someone hit him with a bottle, causing him to fall to the ground, and he was then kicked in the face and head while on the ground. (See Government's Exhibit No. 3; Tr. 5/31/06 at 23.) The complainant informed Investigator Tengen that a female employee of the establishment assisted him until the ambulance arrived. (See Government's Exhibit No. 3; Tr. 5/31/06 at 23.) Mr. Walker told Investigator Tengen that he witnessed the complainant getting stomped and kicked on the ground, but he did not see the verbal altercation that preceded it. (See Government's Exhibit No. 3; Tr. 5/31/06 at 24.)

8. With regard to the Sunday, February 5, 2006 incident (Specification D), Investigator Tengen determined that this incident occurred at approximately 2:00 a.m. and involved a patron being struck in the face while on the dance floor. (See Government's Exhibit No. 4; Tr. 5/31/06 at 25-26.) The complainant informed Investigator Tengen that he went to the establishment to celebrate his birthday and that while exiting the men's bathroom he was struck by another patron. (See Government's Exhibit No. 4; Tr. 5/31/06 at 26.) The complainant told Investigator Tengen that he stood by the assailant in anticipation of an apology and that a bouncer at the establishment thought he was going to start trouble and told him to leave. (See Government's Exhibit No. 4; Tr. 5/31/06 at 26.) The complainant informed Investigator Tengen that while walking out of the establishment he asked the bouncer if he could get the person that he came with and that the bouncer then struck him. (See Government's Exhibit No. 4; Tr. 5/31/06 at 26.) Investigator Tengen interviewed Ms. Jacquet regarding the incident. (See Government's Exhibit No. 4; Tr. 5/31/06 at 27.) Ms. Jacquet informed Investigator Tengen that the incident happened on the Chinese festival date and told Investigator Tengen that she would call her back after reviewing the establishment's incident log; however, Investigator Tengen never heard from Ms. Jacquet again. (See Government's Exhibit No. 4; Tr. 5/31/06 at 27, 52.)

9. During her visits to the establishment, Investigator Tengen never observed customers seated and eating or any tables and chairs set out for restaurant dining. (Tr. 5/31/06 at 42-43.) On the four (4) occasions Investigator Tengen interviewed Mr. Walker regarding the aforementioned incidents, Mr. Walker was never able to locate the establishment's incident log or security plan. (Tr. 5/31/06 at 44-48.) Investigator Tengen has never seen the establishment's incident log or security plan during the course of her investigations. (Tr. 5/31/06 at 46-48.) Investigator Tengen was also unable to speak with the establishment's head of security; instead she was referred to Mr. Walker and/or Ms. Jacquet. (Tr. 5/31/06 at 49-50.) Eventually, Mr. Walker refused to cooperate with her investigation and at one point hung up the phone on her. (Tr. 5/31/06 at 49-50.)

10. Tonya Thomas was a patron of the Respondent's establishment on Saturday, April 30, 2006 (Specification F). (Tr. 5/31/06 at 56.) Between 11:30 p.m. and midnight that evening, as Ms. Thomas was making her way through the crowded establishment, a male patron grabbed her buttocks and "scooped up into [her] vagina." (Tr. 5/31/06 at 57, 77.) She stated that after the assault she pushed the male individual off of her and into another female patron and then approached a male individual by the front door who she assumed was security. (Tr. 5/31/06 at 57, 64-65.) Ms. Thomas reported the assault to the male individual but he looked back at her with a dazed expression and then walked out of the front door to a group of four (4) or five (5) male employees – all of whom were African American except for one Caucasian – who she assumed were security personnel because they were dressed in black. (Tr. 5/31/06 at 57-58, 66, 72-74.) She then asked the security for assistance and told them that she wanted to press charges against the male patron who assaulted her. (Tr. 5/31/06 at 58.) Ms. Thomas indicated that there was no reaction from any of the security staff and that they stood around talking to each other and did not call 911 after she asked them too, causing her to call 911. (Tr. 5/31/06 at 58, 61-62, 67-69.) The male Caucasian told her "Come on. What do you want security to go in because someone touched the pussy? What do you expect? Look at you. You entice brothers," and that the others proceeded to laugh and smirk at his comments. (Tr. 5/31/06 at 58-60.) Ms. Thomas noted that on that evening she was dressed in a Capri pant suit that came to her knees. (Tr. 5/31/06 at 60, 76.) The security staff subsequently told her that the individual who made the comment was not an employee of the establishment. (Tr. 5/31/06 at 60.) When Ms. Thomas asked to speak with the owner of the establishment, a tall male indicated that he was the owner, but refused to provide her with his name, and instead gave her a business card with the name Mike Walker written on it. (Tr. 5/31/06 at 60, 65-67.) Five (5) minutes later, 911 called her back and informed her that MPD officers were already on the scene at the opposite end of the establishment. (Tr. 5/31/06 at 62, 70.) Ms. Thomas told the MPD officers about the assault and they initially looked at her like "What do you want us to do?" (Tr. 5/31/06 at 62.) Over an hour passed before Ms. Thomas was escorted through the establishment by security to try and find the culprit; however, the establishment was so crowded that she could barely see and both she and security had a difficult time making their way through the establishment. (Tr. 5/31/06 at 62-63, 68, 77.) Ms. Thomas was appalled by the fact that the establishment did not care about apprehending the male individual who assaulted her, especially after she paid twenty dollars (\$20.00) to get into the establishment. (Tr. 5/31/06 at 62-63, 75.) Ms. Thomas stated that the male individual who assaulted her was never apprehended. (Tr. 5/31/06 at 63.)

11. Lauren Wilson was a patron of the Respondent's establishment on Friday, May 12, 2006 (Specification G). (Tr. 5/31/06 at 80.) At approximately 12:05 a.m., Ms. Wilson was punched in the eye by a male patron while inside of the establishment. (Tr. 5/31/06 at 80.) Specifically, Ms. Wilson was walking towards a friend to say hello when a male individual standing next to her friend grabbed her arm like he wanted to talk to her. (Tr. 5/31/06 at 80, 99.) Ms. Wilson pulled her arm away and told the male individual "Get off of me." (Tr. 5/31/06 at 80.) The male individual grabbed her arm a second time, even harder, and Ms. Wilson used her left arm to push him away, and that afterwards he struck her in the face. (Tr. 5/31/06 at 80-81.) Ms. Wilson did not recall seeing any security personnel inside of the establishment after the altercation occurred and she stated that the male attacker left the establishment. (Tr. 5/31/06 at 81, 85.) She believes that the establishment's employees saw the incident because it was not crowded that evening and when she went outside, a member of the security staff told her, "Oh, well you hit him first." (Tr.

5/31/06 at 82.) While outside of the establishment, she and her friend were approached by a man – she believes to be Mr. Davis – who identified himself as the owner. (Tr. 5/31/06 at 84, 100.) She asked the owner to call MPD but the owner replied, “Well, are you sure, because you’ll get in trouble and [the establishment] will get in trouble.” (Tr. 5/31/06 at 84.) Ms. Wilson recalled that the owner did not instruct security to apprehend the male individual as he stood outside arguing with her and her friend and that the owner told her that he knew the individual because he frequents the establishment. (Tr. 5/31/06 at 84-88, 91-92.) She then called 911 as no member of the establishment’s security staff offered her assistance. (Tr. 5/31/06 at 86, 100.) Ms. Wilson stated that MPD arrived within three (3) to five (5) minutes and that the male individual disappeared simultaneously. (Tr. 5/31/06 at 88.)

12. Ms. Wilson and her friends did not have to wait in line and they were not searched by security before entering the establishment because they went in with DJ Iran, a radio station DJ who was doing a live broadcast that evening from the establishment. (Tr. 5/31/06 at 89-91, 96.) Prior to the assault, Ms. Wilson had been to the establishment four (4) times over the course of the year but she has not gone out since the assault because she is scared. (Tr. 5/31/06 at 90.) She noted that in the past she has ordered food from the bar area. (Tr. 5/31/06 at 94.)

13. Rodney Anderson, MPD Officer, is assigned to PSA 101 and his tour of duty is from 10:00 a.m. to 6:30 a.m. (Tr. 5/31/06 at 104-105, 111.) Officer Anderson recalled that on the morning of Monday, January 16, 2006 (Specification A), he and his partner responded to a call from a female patron who informed him that while inside of the Respondent’s establishment, a member of the establishment’s security staff challenged her standing in the VIP section of the establishment and then threw ice on her and cursed at her as she was leaving the section. (See Government’s Exhibit No. 5; Tr. 5/31/06 at 105-107.) After conducting his interviews, Officer Anderson discovered that the security person was not employed by the establishment and instead was employed by a patron of the establishment who was a professional athlete. (Tr. 5/31/06 at 105-106, 109.) The athlete’s security person told Officer Anderson that he did not throw ice on the complainant. (Tr. 5/31/06 at 109.) Officer Anderson determined that none of the establishment’s security personnel were involved in the incident. (Tr. 5/31/06 at 106.) Officer Anderson indicated that whenever he has stopped by the establishment, everything has been in order and that the establishment is usually filled with people. (Tr. 5/31/06 at 112-113.)

14. Dwayne Mayo, MPD Officer, responded to a call for an assault in progress at the Respondent’s establishment in the early morning hours of Sunday, January 29, 2006 (Specification C). (See Government’s Exhibit No. 6; Tr. 5/31/06 at 118-119.) Officer Mayo interviewed the complainant who was in a verbal altercation with two (2) individuals and was then hit in the head with a bottle and then stomped and kicked when he fell to the ground. (See Government’s Exhibit No. 6; Tr. 5/31/06 at 120.) The complainant sustained a head injury and was transported to Medstar Hospital. (Tr. 5/31/06 at 121.) When Officer Mayo arrived at the scene, the fire board was assisting the complainant and the establishment’s security had detained the suspects and turned them over to the U.S. Mint Police. (See Government’s Exhibit No. 7; Tr. 5/31/06 at 122.)

15. Jeffrey L. Sibert, MPD Master Patrol Officer, is assigned to the First District. (Tr. 5/31/06 at 129.) Officer Sibert responded to a radio call for an assault at the Respondent’s establishment on

Sunday, February 5, 2006 at approximately 2:00 a.m. (Specification D). (See Government's Exhibit No. 8; Tr. 5/31/06 at 129.) Officer Sibert interviewed the complainant who was assaulted on the dance floor by an unknown suspect who had left the scene. (See Government's Exhibit No. 8; Tr. 5/31/06 at 129-130.) The complainant told Officer Sibert that he was taken out of the establishment by a bouncer and then struck again by a different suspect once outside. (See Government's Exhibit No. 8; Tr. 5/31/06 at 130, 136.) Officer Sibert indicated that when he arrived at the scene the complainant was outside of the establishment, half a block away from the establishment. (See Government's Exhibit No. 8; Tr. 5/31/06 at 131-133.) The complainant told Officer Sibert that he was assaulted by the bouncer, but given the complainant's state of intoxication, Officer Sibert believes that his injuries were solely due to the suspect's attack. (Tr. 5/31/06 at 135-136, 140-141.) Officer Sibert noted that no employee of the establishment identified themselves as the head of security and that the security staff did not provide him with any information regarding the incident and that no one from the establishment asked him for information so that they could log the incident into the establishment's incident log book. (Tr. 5/31/06 at 138-140.)

16. Joseph L. Massey, MPD Sergeant, is a first line supervisor in the First District. (Tr. 5/31/06 at 144.) On Sunday, January 22, 2006, Sergeant Massey was flagged down by a female individual in the 800 block of I Street, N.W. (Specification B). (See Government's Exhibit No. 9; Tr. 5/31/06 at 144.) Sergeant Massey recalled that the female complainant was crying after being assaulted by a male patron of the establishment. (Tr. 5/31/06 at 145.) The complainant told Sergeant Massey that she was inside of the establishment when a male patron began making advances at her and that after she denounced the male patron's advances, the patron got upset and then followed her outside, where words were exchanged, and he punched the complainant several times in the face, knocking her to the ground. (See Government's Exhibit No. 9; Tr. 5/31/06 at 145, 155.) Sergeant Massey noted that the assault occurred at around 3:00 a.m., approximately fifty (50) to one hundred (100) feet away from the establishment, and that the suspect was arrested at approximately 4:00 a.m. (See Government's Exhibit No. 9; Tr. 5/31/06 at 146, 156.)

17. Sergeant Massey believes that the Respondent's establishment is a problem because over the last five (5) months, MPD has had over eleven (11) calls for service and five (5) serious offenses at that location. (Tr. 5/31/06 at 157.) Sergeant Massey thinks that overcrowding inside of the establishment causes most of the problems because the establishment's security personnel are unable to see what's going on and then when security does see an incident occur, they have a difficult time responding to the situation because there are so many people inside of the establishment. (Tr. 5/31/06 at 157-158.) Sergeant Massey indicated that the establishment's occupancy is two hundred and sixty (260); however, based on his professional experience he has observed over four hundred (400) people inside of the establishment. (Tr. 5/31/06 at 157-158, 169.)

18. Glenn Giardino, MPD Detective, is assigned to the First District Superintendent of Detectives Division. (Tr. 5/31/06 at 177.) Detective Giardino investigated a knife assault that occurred inside of the establishment during the early morning hours of Friday, May 12, 2006 (Specification H). (Tr. 5/31/06 at 178.) Detective Giardino determined that while inside of the establishment the complainant was stabbed in the face by another patron, with whom he had a

long-standing beef with, using a six-inch (6") folding knife. (Tr. 5/31/06 at 178-179, 195-196.) The knife was recovered on 9th Street, N.W., with a broken blade and the missing portion of the blade had to be surgically removed from the complainant's face. (Tr. 5/31/06 at 179.) Detective Giardino interviewed Kareem Foster and Kevin Burrell, both employees of the establishment, who informed him that they observed the complainant leaving the establishment through the front door, holding his face and bleeding from his nose. (Tr. 5/31/06 at 180, 190.) Detective Giardino noted that blood was found inside of the establishment and on the street and that the complainant's bloody ball cap was found immediately outside of the door of the establishment. (Tr. 5/31/06 at 190-191.)

19. With regard to the Wednesday, May 17, 2006 incident (Specification I), Detective Giardino interviewed Ms. Lewis, the complainant, who was struck on top of the head with a shoe heel by a female patron of the establishment. (Tr. 5/31/06 at 182-185.) Ms. Lewis told Detective Giardino that as she was walking through the establishment a group of female patrons began fighting and she became an innocent victim of their behavior. (Tr. 5/31/06 at 183.)

20. With regard to the Sunday, February 26, 2006 incident that occurred at approximately 2:30 a.m. (Specification E), ABRA Investigator Richard Coward interviewed MPD Officer Okez, Mr. Walker, and Mr. Foster the establishment's security manager. (See Government's Exhibit No. 12; Tr. 5/31/06 at 199-200.) Officer Okez informed Investigator Coward that the establishment's security personnel were uncooperative. (Tr. 5/31/06 at 200.) Mr. Walker told Investigator Coward that a physical altercation developed that evening inside of the establishment because one party knocked over the birthday cake of another party and that the establishment's security staff responded and broke up the altercation. (See Government's Exhibit No. 12; Tr. 5/31/06 at 201.) Mr. Walker informed Investigator Coward that security put one party out of the establishment first and then attempted to put the second party out but had to detain them because the first party was trying to reenter the establishment to fight the second party. (See Government's Exhibit No. 12; Tr. 5/31/06 at 201-203.) Investigator Coward found Mr. Foster's description of the incident to be similar to Mr. Walker's description. (Tr. 5/31/06 at 202.)

21. With regard to the Wednesday, May 17, 2006 incident (Specification I), Investigator Coward interviewed Stacey Langley who told him that while walking through the Respondent's establishment a male patron touched her inappropriately and when she asked him to stop he did not. (See Government's Exhibit No. 13; Tr. 5/31/06 at 207.) Ms. Langley told Investigator Coward that the male patron then spoke with a female and appeared to be asking the female to attack Ms. Langley. (See Government's Exhibit No. 13; Tr. 5/31/06 at 207.) Ms. Langley informed Investigator Coward that moments later a female approached her and swung at her and that they then began fighting and that during the fight, the female pulled out a weapon and struck Ms. Langley, leaving a gash in Ms. Langley's head. (See Government's Exhibit No. 13; Tr. 5/31/06 at 207.) Ms. Langley was hand searched by a member of the security personnel at the entrance but no one used a hand held metal detecting wand to check her for weapons. (See Government's Exhibit No. 13; Tr. 5/31/06 at 209.) Investigator Coward noted that the establishment's security plan requires that each patron be searched for weapons with a hand held metal detecting wand prior to entry. (See Government's Exhibit No. 13; Tr. 5/31/06 at 209.) Investigator Coward also interviewed Mr. Walker, who informed him that two (2) female patrons were hitting each other with their shoes and that security responded to the incident and put the

females out of the establishment through separate doors. (See Government's Exhibit No. 13; Tr. 5/31/06 at 213, 232.)

22. When Investigator Coward went to the establishment on Thursday, May 18, 2006 at approximately 10:40 p.m. to conduct additional interviews, he observed the establishment's security staff hand-searching patrons but he did not observe security personnel using hand held metal detecting wands (Specification J). (See Government's Exhibit No. 13; Tr. 5/31/06 at 210-212, 229.) Upon concluding his interviews, Investigator Coward observed Mr. Walker retrieve a hand held metal detecting wand off of a shelf in the office and give it to a member of the security staff stationed at the front entrance. (Tr. 5/31/06 at 237.) That same evening Investigator Coward also observed two (2) female patrons wrestling on the floor of the establishment and then broken up by the establishment's security staff, who put the two (2) females out through separate doors. (See Government's Exhibit No. 13; Tr. 5/31/06 at 214.)

23. With regard to the Friday, May 12, 2006 incident that occurred at 1:56 a.m. (Specification H), Investigator Coward determined based upon his interview of the complainant and the MPD detective assigned to the case, that the complainant was stabbed inside of the Respondent's establishment. (See Government's Exhibit No. 15; Tr. 5/31/06 at 219-220.) The complainant told Investigator Coward that he was inside of the establishment when an individual who he had been involved in a physical altercation previously walked up to him and punched him two (2) times, once in the chest and once in the nose. (See Government's Exhibit No. 15; Tr. 5/31/06 at 220, 225.) The complainant informed Investigator Coward that he ran out of the establishment after he was punched and that his nose began bleeding after he was stabbed. (See Government's Exhibit No. 15; Tr. 5/31/06 at 220.) The victim was hand-searched by the establishment's security on the night of the incident but he was not searched with a hand held metal detecting wand. (Tr. 5/31/06 at 224.)

24. Investigator Coward has never seen the establishment's incident log. (Tr. 5/31/06 at 230.) Investigator Coward has observed a total of thirteen (13) security personnel stationed throughout the establishment, including three (3) individuals at the front door, one individual at the rear door, one individual at the side door, one individual at the front bar, one individual at the back bar, one individual at the liquor room, and the remaining individuals floating throughout the premises. (See Government's Exhibit No. 16; Tr. 5/31/06 at 236.) Investigator Coward noted that the establishment's security staff wears black shirts and black pants. (See Government's Exhibit No. 16; Tr. 5/31/06 at 239.)

25. Lauren Campbell was employed as director of security at the Respondent's establishment at the time of the June 7, 2006 hearing. (Tr. 6/7/06 at 7, 25.) Ms. Campbell was offered the director of security position on June 5, 2006. (Tr. 6/7/06 at 28, 35.) Ms. Campbell was born and raised in Washington, D.C. (Tr. 6/7/06 at 7.) In 1994, Ms. Campbell was sentenced to nine and a half (9 ½) years in prison for attempted murder. (Tr. 6/7/06 at 9.) Ms. Campbell served eight (8) years of her prison sentence in a maximum security female correctional facility in Dublin, California and then served the remainder of her prison sentence in a minimum security prison in Danbury, Connecticut. (Tr. 6/7/06 at 9-10.) While in prison, she attained her GED and a four (4) year degree in educational studies. (Tr. 6/7/06 at 10-11.) Ms. Campbell was released from prison on December 17, 2002. (Tr. 6/7/06 at 11.)

26. Ms. Campbell worked as assistant head of security at Crossroads nightclub in Bladensburg, Maryland, for over two and a half (2 ½) years where she managed thirty-two (32) staff members, and she has worked at two (2) other nightclubs in the past, including Icon in Charles County, Maryland, and Tradewinds in Clinton, Maryland. (Tr. 6/7/06 at 12, 53.) She is currently employed as a correctional officer in Hagerstown, Maryland, at a maximum security correctional facility for men. (Tr. 6/7/06 at 13-14.) Ms. Campbell has worked as a correctional officer at the Maryland Department of Corrections for two and a half (2 ½) years. (Tr. 6/7/06 at 14.) She underwent a six (6) week training program that taught her how to diffuse volatile situations. (Tr. 6/7/06 at 14-15.) As a correctional officer, Ms. Campbell is armed with a baton and pepper spray and is authorized to use her baton and/or pepper spray to calm down violent situations within the prison. (Tr. 6/7/06 at 23-24.) She acknowledged that she would not be similarly armed while working at the Respondent's establishment. (Tr. 6/7/06 at 24.)

27. Ms. Campbell began working security at the Respondent's establishment in April 2006, one day per week, usually on Friday nights. (Tr. 6/7/06 at 18-19, 29, 35.) She did not receive any training when she began working at the establishment and has never seen the establishment's security plan or incident log and she has not had to prepare an incident report or had to call MPD while working at the establishment. (Tr. 6/7/06 at 37-41, 47.) Ms. Campbell's post as a security staff member is near the restrooms and she has never observed how the front door of the establishment operates because she stays at her post. (Tr. 6/7/06 at 30, 38-41.) Ms. Campbell reported to Mr. Foster, the establishment's previous head of security. (Tr. 6/7/06 at 23, 50.) Under the establishment's proposal at the June 7, 2006 hearing, Mr. Foster would report directly to Ms. Campbell. (Tr. 6/7/06 at 51-52.) She indicated that she has never had to eject patrons from the establishment. (Tr. 6/7/06 at 25.) Ms. Campbell stated that the establishment has one front door, a side door that is used by employees and for deliveries and patrons exiting the establishment, and a rear door near the restrooms. (Tr. 6/7/06 at 40-41.) Ms. Campbell stated that members of the security staff are currently stationed throughout the establishment on platforms so that each staff member can clearly see over the patrons. (Tr. 6/7/06 at 56-57.) She has eaten at the establishment, but she has never seen patrons dine at the Respondent's establishment. (Tr. 6/7/06 at 54.)

28. Ms. Campbell stated that as director of security for the establishment she would make herself accessible to the female patrons and take all situations involving female patrons seriously. (Tr. 6/7/06 at 16.) She admitted that in the past the establishment has not always used hand held metal detecting wands. (Tr. 6/7/06 at 16.) Ms. Campbell indicated that as director of security she would implement a policy where every patron is to be searched and wanded, even famous patrons. (Tr. 6/7/06 at 17.) She expects to work at the establishment between four (4) and five (5) times per week, depending on the number of events at the establishment. (Tr. 6/7/06 at 22.) Ms. Campbell was not familiar with the establishment's security plan. (Tr. 6/7/06 at 22, 37, 46.)

29. Ms. Campbell testified that as the establishment's new director of security she will implement a policy that all complaints by patrons must be taken seriously by staff and not brushed aside. (Tr. 6/7/06 at 25-27, 45.) Ms. Campbell indicated that if the establishment were to reopen, only some individuals from the current security staff would continue to be employed. (Tr. 6/7/06 at 28.) She estimated that between eighteen (18) and twenty-two (22) individuals

would be working under her supervision. (Tr. 6/7/06 at 30, 52.) Ms. Campbell does not believe that the establishment has an issue with overcrowding and she believes that placing more security staff on the floor would allow security to see more situations as they arise. (Tr. 6/7/06 at 32-33.) She stated that she has never seen the establishment crowded and that she has seen up to three hundred (300) people inside of the establishment. (Tr. 6/7/06 at 36.)

30. Daniel Davis is vice president of Dantess, Inc., and Tesfaye Seyoum is president, each holding fifty percent (50%) of the company's stock. (Tr. 6/7/06 at 60, 94, 122; Tr. 7/19/06 at 11.) Mr. Seyoum is not involved in the day-to-day operations of the establishment. (Tr. 6/7/06 at 61, 95.) Mr. Davis stated that he, Ms. Jacquet, and Mr. Walker are at the establishment every evening. (Tr. 6/7/06 at 96-97.) Mr. Davis testified that the establishment is open Wednesday through Saturday, beginning at 6:00 p.m., and that they serve between seventy-five (75) to one hundred (100) plates of food per evening. (Tr. 6/7/06 at 126-127.) Patrons are charged a cover charge of twenty dollars (\$20), which covers a free food buffet that is offered between 6:00 p.m. and 7:00 p.m. (Tr. 6/7/06 at 134-136.) Mr. Davis believes that the establishment's food sales percentage is forty-five (45) percent and he stated that patrons eat around the bar area and at tables along the perimeter of the establishment. (Tr. 6/7/06 at 113.)

31. Mr. Davis testified that after Investigator Tengen left her business card in his office, both he and Ms. Jacquet called Investigator Tengen on several occasions and left messages on her voicemail. (Tr. 6/7/06 at 61-62.) The establishment's director of security at the time, Mr. Foster, is a contractor who owns Tyler Security, which has been the establishment's security provider for two (2) years. (Tr. 6/7/06 at 71, 108, 115.) Mr. Davis indicated that Ms. Campbell, the establishment's new director of security, would work directly for the establishment and report directly to him. (Tr. 6/7/06 at 72.) Mr. Foster would have reported to Ms. Campbell and to him. (Tr. 6/7/06 at 72-73.) Mr. Davis believed that Ms. Campbell would have been the right person for the job based on her background and her responses to questions he asked in a staff meeting regarding the incidents that involved female patrons. (Tr. 6/7/06 at 70.)

32. With regard to the incident on Friday, April 30, 2006 (Specification F), Mr. Davis stated that the establishment has never employed a Caucasian security staff member. (Tr. 6/7/06 at 63.) Mr. Davis has not fired any of the establishment's staff members who were stationed outside of the establishment that evening. (Tr. 6/7/06 at 84.)

33. With regard to the Friday, May 12, 2006 incident (Specification H), Mr. Davis knew Antoine "Tone" Russell, the stabbing victim, prior to the incident. (Tr. 6/7/06 at 63-64.) On the evening of the incident, Mr. Davis was standing outside of the establishment and observed Mr. Russell coming out of the front door holding his nose and saying that someone hit him. (Tr. 6/7/06 at 65.) Mr. Davis stated that he asked Mr. Russell to "hold on" and tried unsuccessfully to hold him as Mr. Russell continued running down the street. (Tr. 6/7/06 at 65-66.) About one day later he spoke with Mr. Russell who informed him that he had been stabbed by a person he had previously fought over a monetary bet. (Tr. 6/7/06 at 67-68.) Mr. Davis stated that Mr. Russell told him he was attacked by surprise while standing with some friends. (Tr. 6/7/06 at 68-69.)

34. Mr. Davis testified that he was very disturbed by the testimony of the female patrons who claimed to have been assaulted inside of the establishment and he instructed his employees in a

staff meeting on how to handle similar situations in the future and informed them that he would not tolerate that type of harassment in his establishment. (Tr. 6/7/06 at 70-71, 122.) Due to the establishment's sloppy enforcement of wandling all patrons, he purchased a walk-through airport metal detector and security cameras for the front door to ensure that patrons are being searched and wanded and he stated that he will immediately terminate any staff member that is not adhering to the policy of wandling and searching every patron. (Tr. 6/7/06 at 73-74, 87-89.) Mr. Davis admitted that the establishment's security plan required that every person be wanded and that this policy was not followed by his staff. (Tr. 6/7/06 at 82.) Certain security staff members with whom he had issues with were terminated, but he did not fire Mr. Foster, although, Mr. Foster was responsible for everything that happened at the front door. (Tr. 6/7/06 at 83, 117, 141, 144) Mr. Davis indicated that prior to the latest set of circumstances he was satisfied with the performance of Tyler Security and Mr. Foster. (Tr. 6/7/06 at 118.)

35. Mr. Davis stated that the establishment's security staff would attend a training session every six (6) weeks instead of every ninety (90) days, which is handled by Tyler Security and includes sexual harassment and sensitivity training. (Tr. 6/7/06 at 89-90, 103.) Ms. Campbell did not receive training because she was not a full-time employee and she had prior experience. (Tr. 6/7/06 at 90, 104.) Mr. Davis noted that there are fourteen (14) full-time security staff members and that all have been trained. (Tr. 6/7/06 at 105.) He testified that the establishment has an incident log which is kept in the office and that any incident is logged into the book by the ABC manager and by security personnel. (Tr. 6/7/06 at 105.) Mr. Davis indicated that he will no longer allow celebrity patrons to bring their private security details because he cannot control what they do. (Tr. 6/7/06 at 111-112.)

36. Mr. Davis noted that the establishment's capacity is two hundred and forty-four (244) and that by using two (2) counters, one for entering patrons and one for exiting patrons, he will be able to ensure that the establishment's capacity is not exceeded. (Tr. 6/7/06 at 75, 131.) He stated that no one will be allowed to use the side door, except at the end of the evening as an exit. (Tr. 6/7/06 at 76-77, 89.) Mr. Davis also made arrangements to employ an overtime MPD detail to include three (3) MPD officers in the event the establishment reopens. (See Respondent's Exhibit No. 1; Tr. 6/7/06 at 77-79; Tr. 7/19/06 at 13, 39.) He believes that having an MPD detail outside of the establishment will give his patrons a sense of comfort and security. (Tr. 6/7/06 at 79-80.) Mr. Davis believes that his establishment is a safe place. (Tr. 6/7/06 at 107.)

37. At the July 19, 2006 show cause hearing, Mr. Davis subsequently testified that he took several additional security measures after the Board declined to lift the summary suspension of the Respondent's license on June 7, 2006. (Tr. 7/19/06 at 12-49.)⁴ Mr. Davis terminated Tyler Security and hired a new security staff to work as employees of the establishment instead of as contractors. (Licensee's Exhibit No. 1; Tr. 7/19/06 at 12-17, 34.) Mr. Davis did not retain the services of Mr. Foster, the establishment's former head of security and owner of Tyler Security.

⁴ The Board notes that the additional security measures referred to by Mr. Davis during his testimony are contained in the Respondent's Managerial/Security Operations and Procedures ("MSOP") manual, which was reviewed by the Board on July 19, 2006. (See Show Cause File No. 60853-06/017C; Tr. 7/19/06 at 60.) The Board also notes that the Respondent's MSOP manual was taken under judicial notice as part of the Board's official file and simultaneously marked as Licensee's Exhibit No. 2. (See Show Cause File No. 60853-06/017C; See Licensee's Exhibit No. 2; Tr. 7/19/06 at 60-61.)

(Tr. 7/19/06 at 21, 25.) He retained two (2) females and four (4) males from the old security staff he believed were good employees, including Ms. Campbell. (Tr. 7/19/06 at 18-19.) Mr. Davis would have up to eighteen (18) security staff members, with twelve (12) individuals working full-time, and his security staff would attend a four (4) hour training session entitled “Critical Incident Awareness Program”, to be taught by Timothy Dumantt. (Tr. 7/19/06 at 36-37.) Mr. Davis did not know if this training program had been used by other ABC establishments or whether the training has been effective. (Tr. 7/19/06 at 44.) He hired the new security staff with the assistance of Ainsely Grant, the establishment’s new director of security. (Tr. 7/19/06 at 14-15, 25, 34.) Mr. Davis purchased a walk-through metal detector, extra metal detecting wands, and a new surveillance system with twenty-five (25) recording video cameras positioned throughout and outside of the establishment. (Tr. 7/19/06 at 14, 37-39.) The video cameras record for twenty-four (24) hour periods and have a retention time of two (2) weeks. (Tr. 7/19/06 at 47-48.) He indicated that he is also implementing a barring policy whereby a log book of the names and photo IDs of patrons who are identified as “aggressors” will be kept at the front door so staff can deny entry to these individuals upon showing their ID. (Tr. 7/19/06 at 39-40, 49.) None of the individuals involved in the incidents that are the subject of the Show Cause Notice were previously banned from the establishment. (Tr. 7/19/06 at 49.)

38. Ainsely Grant is the current director of security at the Respondent’s establishment. (Tr. 7/19/06 at 59.) Mr. Grant is a security consultant with twenty (20) years of experience. (Tr. 7/19/06 at 54.) Mr. Grant worked as a uniform security officer in 1987 and has worked as a private body guard and with a private detective agency. (Tr. 7/19/06 at 55.) Mr. Grant has been through security training and has obtained handgun certification and state police clearance. (Tr. 7/19/06 at 55.) He currently assists with security at three (3) establishments in Georgetown, Blue Gin, Old Glory, and Agua Ardiente, as well as Fine Mondo downtown. (Tr. 7/19/06 at 55, 76.) However, in his new position as the director of security, Mr. Grant would work solely at the Respondent’s establishment. (Tr. 7/19/06 at 59, 74, 97.)

39. Mr. Grant is familiar with the Respondent’s establishment because he did promotional work there on Friday nights for a period of three (3) to four (4) months prior to the establishment being suspended. (Tr. 7/19/06 at 56-57.) During that time period, Mr. Grant observed some of the establishment’s security procedures, including the checking of IDs, the checking of patrons at the front door, and how patrons were escorted out of the establishment after an incident occurred. (Tr. 7/19/06 at 57.) Mr. Grant found the quality of the establishment’s security and its staff to be unprofessional and lacking in leadership. (Tr. 7/19/06 at 58, 77.) He stated that when an altercation occurred inside of the establishment, the security staff would approach the situation like “bowling balls at a ten-pin bowling alley”, running towards the altercation while knocking patrons out of the way. (Tr. 7/19/06 at 78.) Mr. Grant was also displeased with the fact that the security staff did not greet the patrons in a friendly manner as they entered the establishment. (Tr. 7/19/06 at 78.) He indicated that under his supervision, the security staff would be required to greet the patrons graciously and that when fights occur the staff would be instructed to approach the situation safely, extricate the parties, and then determine how to prevent a similar situation from occurring again. (Tr. 7/19/06 at 79-80.)

40. Mr. Grant provided his personal assessment of each new security staff member hired by both he and Mr. Davis, specifically with regard to their competency in security matters and their prior

experience working security at local ABC establishments. (See Licensee's Exhibit No. 1; Tr. 7/19/06 at 62-70, 101.) He made positive remarks about each security staff member and their qualifications and testified that each new hire would undergo background checks and obtain police clearances. (See Licensee's Exhibit No. 1; Tr. 7/19/06 at 62-70, 87, 104.) Mr. Grant did not write the Respondent's new security plan; however, he had reviewed it and made adjustments where necessary. (See Licensee's Exhibit No. 2; Tr. 7/19/06 at 110.) He stated that the incidents contained in the Notice to Show Cause demonstrate a lack of leadership from the establishment's former head of security, as well as a lack of training for the security staff on how to handle different situations. (Tr. 7/19/06 at 71-73.) Mr. Grant believes that under his supervision, and with consistent training for all security staff every six (6) months and regular critiquing of the security staff with regard to what they can and cannot do, the security at the Respondent's establishment would run smoother. (Tr. 7/19/06 at 73-74, 98.) Mr. Grant stated that he alone will have complete control over the security operations of the establishment. (Tr. 7/19/06 at 104.)

CONCLUSIONS OF LAW

41. The Board has the authority to suspend or revoke the license of a licensee who violates any provision(s) of Title 25 of the D.C. Official Code pursuant to D.C. Official Code § 25-823(1) (2001). Additionally, the Board has the authority to suspend or revoke the license of a licensee who allows the licensed establishment to be used for any unlawful or disorderly purpose pursuant to D.C. Official Code § 25-823(2) (2001). In the present case, the Board finds that the Respondent's violation of D.C. Official Code § 25-823(2) (2001), as described below, warrants the revocation of the Respondent's Class "CR" Retailer's License.

42. With regard to Charge I, the Board must determine whether the Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose as set forth in D.C. Official Code § 25-823(2) (2001). The Board notes that within Charge I are a total of ten (10) Specifications (A, B, C, D, E, F, G, H, I, and J), each of which must be evaluated by the Board. In this case, the Board finds based upon Specifications D, F, G, H, I, and J of Charge I that the Respondent did allow the licensed establishment to be used for a disorderly purpose on at least six (6) separate occasions over the course of four (4) months, in violation of D.C. Official Code § 25-823(2) (2001). The Board did not find the testimony and evidence presented by OAG on Specifications A, B, C, and E of Charge I to be sufficient to establish that the Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose with regard to these incidents.

43. With respect to Specification A, the testimony of Officer Anderson revealed that on Monday, January 16, 2006, he and his partner responded to a call from a female patron who alleged having an altercation with a member of the establishment's security staff in the VIP section of the establishment. Officer Anderson was later able to determine that the complainant mistakenly identified the private security guard of a professional athlete in attendance at the establishment as a "bouncer" or employee of the establishment. The testimony of Officer Anderson and Investigator Tengen also revealed that the "bouncer" denied throwing ice on the complainant and that the establishment's security staff was not involved in the incident. Having no direct testimony from the complainant or additional evidence to establish the Respondent's role with

regard to this disputed altercation, the Board does not find the incident contained in Specification A of Charge I to demonstrate that the Respondent allowed the establishment to be used for an unlawful or disorderly purpose.

44. With regard to Specification B, the testimony of Sergeant Massey and Investigator Tengen revealed that on Sunday, January 22, 2006, Ms. Brown was punched in the face by a male patron approximately one block away from the establishment while walking to her car. Sergeant Massey and Investigator Tengen confirmed that earlier in the evening Ms. Brown had denied the male patron's flirtatious advances while inside of the Respondent's establishment. In this instance, the Board does not find the testimony presented to support the charge that the Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose as the encounter between Ms. Brown and her assailant inside of the licensed establishment did not rise to a level of disorder that should have alarmed the security staff. This finding is further substantiated by the testimony of Sergeant Massey and Investigator Tengen, which revealed that Ms. Brown did not complain about or make the establishment's security staff aware of the male patron's behavior for fear of "mak[ing] a scene." As a result, the Board does not find the incident contained in Specification B of Charge I to demonstrate that the Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose.

45. With respect to Specification C, the testimony of Officer Mayo and Investigator Tengen revealed that on Sunday, January 29, 2006, a verbal altercation between patrons became physical resulting in the complainant being hit in the head with a bottle and then getting stomped and kicked on the floor. However, Officer Mayo's testimony indicated that the complainant was subsequently assisted by a female employee until the ambulance arrived and that the establishment's security stopped the altercation, detained the assailants, and then placed them in the custody of the U.S. Mint Police until MPD Officer Mayo and his partner arrived. The Board finds that the Respondent acted appropriately in stopping the altercation and then surrendering the assailants to law enforcement. Consequently, the Board does not find the incident contained in Specification C of Charge I to demonstrate that the Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose.

46. With regard to Specification D, the testimony of Officer Sibert and Investigator Tengen established that on Sunday, February 5, 2006, a patron was struck in the face while inside of the Respondent's establishment by another patron and then escorted outside of the establishment by a member of the security staff where he was assaulted again by the same assailant. The complainant's allegation of being assaulted by a member of the establishment's security staff could not be verified by the Board given Officer Sibert's recollection that the complainant was highly intoxicated and that the complainant's injuries appeared to be due solely to the assailant. However, Officer Sibert's testimony also revealed that the Respondent's security staff was uncooperative in that they did not provide Officer Sibert with any information concerning the incident. The Board is also concerned with the fact that there was no effort from the Respondent's security staff to attain information from the complainant or Officer Sibert so that an incident report could be completed and logged into the establishment's incident log as required by the Respondent's Managerial Operations and Procedures manual ("MOP manual"). The Board finds that the Respondent's practice of ejecting patrons without diligent attempts to assess or record the details of the incident, i.e., record the name and get a copy of the photo ID of

the alleged perpetrator and complainant to safeguard against the perpetrator returning to the establishment and committing similar actions again in the future, is irresponsible and sends a message to patrons that disorderly behavior will be tolerated by the Respondent to the extent that the perpetrators can be thrown out of the establishment. Based upon the above, the Board finds the incident contained in Specification D of Charge I to demonstrate that the Respondent allowed the licensed establishment to be used for a disorderly purpose on Sunday, February 5, 2006, in violation of D.C. Official Code § 25-823(2) (2001).

47. With respect to Specification E, the testimony of Investigator Coward revealed that on Sunday, February 26, 2006 a physical altercation developed between two (2) groups of patrons inside of the Respondent's establishment and that the security staff responded and separated the two (2) groups. Investigator Coward's testimony also revealed that the security staff then escorted the first group out of the establishment but upon attempting to escort the second group out of the establishment, the security staff instructed the second group to remain inside until MPD arrived because the first group tried to re-enter the establishment to fight again. In this instance, the Board finds that the Respondent acted responsibly and prevented further disorder from ensuing by calling MPD and then detaining the second group of patrons inside of the establishment until MPD arrived on the scene. Thus, the Board does not find the incident contained in Specification E of Charge I to demonstrate that the Respondent allowed the licensed establishment to be used for a disorderly purpose on Sunday, February 26, 2006, in violation of D.C. Official Code § 25-823(2) (2001).

48. With regard to Specification F, the testimony of Ms. Thomas revealed that on Friday, April 30, 2006 she was sexually assaulted by a male patron while inside of the Respondent's establishment and that the security staff was unresponsive to her request for assistance after the incident occurred. Specifically, Ms. Thomas recalled that the security staff did not call 911 after she expressly indicated that she wanted to press charges against her assailant and that the security staff proceeded to laugh and smirk at insensitive and rude remarks made to her by an individual standing outside, instead of addressing the situation in a professional and responsible manner. Ms. Thomas also noted that it was over an hour before the security staff escorted her through the establishment to find the assailant. The Board is disturbed and appalled by the way in which the Respondent's security handled this incident. Despite Ms. Thomas' plea for immediate assistance, the security staff demonstrated no sense of urgency and consequently allowed the perpetrator of a sexual assault to remain inside of the licensed premises, potentially endangering other patrons. Based upon the above, the Board finds the incident contained in Specification F of Charge I to demonstrate that the Respondent allowed the establishment to be used for a disorderly and unlawful purpose on Friday, April 30, 2006, in violation of D.C. Official Code § 25-823(2) (2001).

49. With respect to Specifications G and H, the Board heard testimony regarding two (2) violent incidents that occurred inside of the Respondent's establishment during the early morning hours of Friday, May 12, 2006, which established that the Respondent allowed the licensed premises to be used for a disorderly purpose. The disorder began with the incident contained in Specification G of Charge I involving an assault on Ms. Wilson, which occurred at approximately 12:05 a.m. The testimony of Ms. Wilson revealed that she was punched in the eye by a male patron while inside of the establishment after she rejected his advances. Ms. Wilson's testimony revealed that

the assailant exited the establishment and that once she went outside, Mr. Davis did not call MPD and did not apprehend the assailant as he stood outside arguing with Ms. Wilson and her friend, indicating that he knew the assailant and that the Respondent would “get in trouble” if MPD was called. The testimony of Ms. Wilson revealed that the security staff had knowledge of the incident as a member of the security staff told her, “Oh, well you hit him first.” Ms. Wilson testified that she finally called 911 after getting no assistance from the security staff. The Board notes that the Respondent’s MOP manual clearly requires that MPD be contacted in the event that an incident rises to a criminal level. The disorderly activity on Friday, May 12, 2006 also included the incident contained in Specification H of Charge I, which occurred at approximately 1:56 a.m. The testimony of Detective Giardino and Investigator Coward revealed that Mr. Russell was stabbed in the face while inside of the establishment by a male patron using a six-inch (6”) folding knife. The testimony of Detective Giardino, Mr. Davis and Investigator Coward confirmed that after the assault, Mr. Russell was seen exiting the establishment holding his face and bleeding from his nose.

50. Based on the testimony heard, the Board finds that both incidents involved breaches in the Respondent’s MOP manual. First, the Board finds that Mr. Davis’ refusal to contact MPD after the assault on Ms. Wilson was a clear violation of the security procedures set forth above. Moreover, Mr. Davis’ failure to address the situation appropriately again sends a message to patrons that disorderly behavior will be tolerated by the Respondent. Second, the testimony of Ms. Wilson and Investigator Coward revealed that the Respondent’s security staff neglected to search Ms. Wilson and Mr. Russell using hand held metal detectors as required. While this security failure could not have prevented the assault on Ms. Wilson, the likelihood of Mr. Russell being stabbed in the face with a metal object would have been severely diminished if protocol had been followed. The Board finds that collectively these breaches in security are indicative of the Respondent’s attitude of indifference, as demonstrated by both the ownership and the employees, towards the overall safety and well being of the establishment’s patrons. Consequently, the Board finds the incidents contained in Specifications G and H of Charge I to demonstrate that the Respondent allowed the establishment to be used for a disorderly purpose on Friday, May 12, 2006, in violation of D.C. Official Code § 25-823(2) (2001).

51. With regard to Specification I, the testimony of Investigator Coward revealed that on Wednesday, May 17, 2006, a physical altercation erupted inside of the Respondent’s establishment between two (2) female patrons resulting in one of the female patrons, Ms. Langley, getting struck in the head with a shoe heel. Investigator Coward’s testimony established that security responded to the altercation and that both females were escorted outside of the establishment through separate doors. Investigator Coward’s testimony further revealed that another female patron, Ms. Lewis, was also struck in the head by a shoe heel as she was walking by the altercation. The Board notes that based on the testimony of Investigator Coward and his written investigative report, the security staff did not operate in accordance with the Respondent’s MOP manual by failing to: 1) notify MPD; 2) turn the assailants over to the MPD officer that was stationed outside of the establishment; 3) record the incident in the establishment’s incident log book; or 4) assist Ms. Langley with the head wound she sustained. Based on the aforementioned, the Board finds the incident contained in Specification I of Charge I to demonstrate that the Respondent allowed the establishment to be used for a disorderly purpose on Wednesday, May 17, 2006, in violation of D.C. Official Code § 25-823(2) (2001).

52. With respect to Specification J, the testimony of Investigator Coward revealed that on Thursday, May 18, 2006, the establishment's security staff hand-searched patrons as they entered the licensed premises but did not use hand held metal detectors as required by the Respondent's MOP manual. Investigator Coward also observed the establishment's security break up a physical altercation between two (2) female patrons and then eject the patrons through separate doors. Investigator Coward noted that both patrons refused to present their identification to Mr. Walker, the establishment's ABC manager. The Board is concerned that the Respondent's search procedures continue to be half-way performed by the security staff and that the security staff did not call MPD regarding the physical altercation between the two (2) female patrons. As such, the Board finds the incidents contained in Specification J of Charge I to demonstrate that the Respondent allowed the establishment to be used for a disorderly purpose on Thursday, May 18, 2006, in violation of D.C. Official Code § 25-823(2) (2001).

53. In deciding whether to revoke the Respondent's Class "CR" Retailer's License, the Board also took into account the additional security measures taken by the Respondent since the June 7, 2006 summary suspension hearing, which were memorialized in the newly submitted MSOP manual, a revised version of the Respondent's MOP manual. The additional security measures as described by Mr. Davis include: 1) the termination of the contracted security company, Tyler Security; 2) the recruitment of an experienced security staff to be employed directly by the Respondent, including Mr. Grant, the new director of security; 3) the engagement of Critical Incident Awareness, LLC, to provide professional training for the security staff; 4) the purchase of a walk-thru metal detector, extra hand held metal detecting wands, and a twenty-five (25) camera surveillance system; 5) the use of only one entrance, the front door, as opposed to the establishment's side door that was used in the past; 6) the implementation of a barring policy to include a log book of the names and picture IDs of patrons who are barred from the licensed premises; and, 7) the employment of a reimbursable detail of three (3) MPD officers.

54. Despite the Respondent's efforts to revamp its security procedures, the Board cannot be certain that the aforementioned measures will have the desired effect of ensuring a safe environment for patrons as the Respondent failed to consistently execute and enforce the existing security procedures contained in the MOP manual. The Board heard disturbing testimony from Investigator Coward, Ms. Wilson, and Mr. Davis that the security procedures contained in the Respondent's MOP manual were breached on numerous occasions by the security staff, as well as the establishment's ABC manager, the establishment's director of security, and Mr. Davis, including but not limited to, the mandatory use of hand held metal detecting wands and the use of only one entrance point into the establishment. The testimony of Ms. Wilson and Ms. Thomas was especially troubling to the Board as it revealed that on two (2) separate occasions the Respondent's security staff and Mr. Davis completely disregarded existing security procedures by refusing to call MPD to assist Ms. Wilson and Ms. Thomas after both suffered physical assaults inside of the establishment by patrons who could have been apprehended. The testimony of Investigator Coward and Investigator Tengen also indicated that the Respondent's incident log book could never be located by management, even though all incidents/events were to be documented and maintained by both Mr. Walker and Ms. Jacquet per the Respondent's MOP manual. Another factor considered by the Board was the issue of overcrowding inside of the Respondent's establishment. While the Board heard no testimony as to the exact number of

patrons inside of the establishment during the incidents contained in Charge I, the Board gives weight to the professional assessment of Sergeant Massey that the establishment's problems could largely be attributed to the overcrowding he has observed, which ultimately prevents the security staff from spotting altercations as they develop and prevents the security staff from responding to altercations in a swift manner. Finally, it is worth noting that while the Respondent holds a Class "CR" (restaurant) Retailer's License, the Board found the operations of the establishment to focus primarily on promoting nightclub-like activities rather than sit-down food service, which resulted in a crowded chaotic atmosphere that was ripe for physical altercations. This determination is further supported by the testimony of Investigator Tengen, who during her visits to the establishment never observed customers seated and eating, or any tables and chairs set out for restaurant dining.

55. Based upon the above, the Board finds that the Respondent's violation of D.C. Official Code § 25-823(2) (2001), as set forth in Specifications D, F, G, H, I, and J of Charge I, warrants the revocation of the Respondent's Class "CR" Retailer's License.

ORDER

THEREFORE, it is hereby **ORDERED**, on this 2nd day of August 2006, that the Class "CR" Retailer's License issued to Dantess, Inc., t/a Pearl, be and is hereby **REVOKED**.

Dantess, Inc.
t/a Pearl
August 2, 2006

District of Columbia
Alcoholic Beverage Control Board

Charles A. Burger, Chairperson

Vera M. Abbott, Member

Judy A. Moy, Member

Audrey E. Thompson, Member

Peter B. Feather, Member

Albert G. Lauber, Member

Eartha Isaac, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).